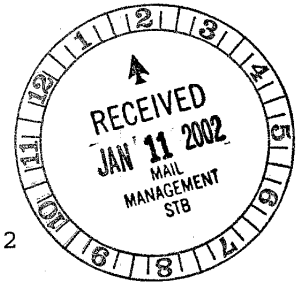


LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601

(202) 263-4152
FAX (202) 331-8330
e-mail: xicgc@worldnet.att.net

204389
ORIGINAL



January 11, 2002

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of the Secretary
JAN 14 2002
Part of
Public Record

Dear Secretary Williams:

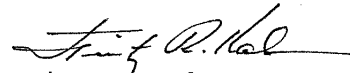
Enclosed for filing in STB Finance Docket No. 34087,
Trinidad Railway, Inc.--Lease and Operation Exemption--Kern
Valley Railroad Company, are the original and ten copies of the
Reply of Kern Valley Railroad Company.

Additional copies of this letter and of the Reply are
enclosed for you to stamp to acknowledge your receipt of them and
to return to me via messenger.

By copy of this letter, service is being effected in
accordance with the Certificate of Service.

If you have any question concerning the foregoing which you
believe I may be able to answer or if I otherwise can be of
assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Thomas F. McFarland, Esq.
Charles H. Montange, Esq.
John D. Heffner, Esq.
Michael J. Van Wagenen, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

204389
ORIGINAL

STB Finance Docket No. 34087

TRINIDAD RAILWAY, INC.
-- LEASE AND OPERATION EXEMPTION --
KERN VALLEY RAILROAD COMPANY



REPLY
OF
KERN VALLEY RAILROAD COMPANY

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Attorney for

KERN VALLEY RAILROAD COMPANY

Dated: January 11, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34087

TRINIDAD RAILWAY, INC.
-- LEASE AND OPERATION EXEMPTION --
KERN VALLEY RAILROAD COMPANY

REPLY
OF
KERN VALLEY RAILROAD COMPANY

Kern Valley Railroad Company ("KVR"), pursuant to 49 C.F.R. 1104.13(A), replies to the Petition, dated January 2, 2002, of Trinidad Railway, Inc. ("TRI"), and A. P. Maxwell Development Company, L.L.C. ("Maxwell"), to Reopen the proceeding to vacate the Board's Decision, served December 12, 2001, on the ground that new evidence and changed circumstances require the Decision's reversal, as follows:

1. The Petition well documents the new evidence and changed circumstances which warrant the Board's reopening of the proceeding to vacate the Board's Decision. As recently as September 1, 2000, TRI availed itself of the out-of-service class exemption, 49 C.F.R. 1152.50, to abandon the 28-mile railroad line between Jansen and New Elk Mine, east of Stonewall, Colorado. The price of coal was so low that Maxwell, which owned rights to mine coal in the area, had been unable economically to commence mining operations, and, in the absence of any other

shippers, actual or potential, no traffic had moved over TRI's line in approximately five years' time. In the interim, however, the price of coal has doubled, thereby permitting coal to be mined profitably along the railroad line. A subsidiary of Maxwell, Lorencito Mining Company, L.L.C., secured the requisite permits and began mining coal on October 18, 2001.

2. Meanwhile, however, TRI, another Maxwell subsidiary, had sold the railroad line to KVR, which planned to exercise the abandonment authorization which TRI had secured, subject, of course, to the notice to file an offer of financial assistance of Rail Ventures, Inc., the request for a trails condition by the Rails to Trails Conservancy and the environmental conditions recommended by the Section of Environmental Analysis. See, STB Finance Docket No. 33956, Kern Valley Railroad Company--Acquisition and Operation Exemption--Trinidad Railway, Inc., served November 21, 2000. Only recently, by its Decision, served in that proceeding on December 12, 2001, the Board upheld the validity of that transaction.

3. When the reopening of mining along the Jansen-to-New Elk Mine railroad line became a realistic possibility, Maxwell approached KVR to see about the resumption of railroad service on the line. The Board's acceptance of the offer of financial assistance filed by Rail Ventures, Inc., had foreclosed KVR's exercise of the abandonment authorization,¹ and, hence, KVR

¹ See, STB Docket No. AB-573X, Trinidad Railway, Inc.--Abandonment Exemption--In Las Animas County, CO, served December 8, 2000.

remained the common carrier authorized and, indeed, required, pursuant to 49 U.S.C. 11101, to render service on the line upon reasonable request. KVR was prepared to provide that service, using a contract operator; however, it acceded to the request of Maxwell to have TRI reacquire and operate the line, pursuant to a lease of the property.

4. KVR, accordingly, sought leave to withdraw the abandonment request,² and TRI gave notice of its intent to lease the Jansen-to-New Elk Mine railroad line.³ By its Decision, served December 12, 2001, the Board disallowed KVR's withdrawal of the abandonment request and summarily rejected TRI's Verified Notice of Exemption.

5. In its Petition for Reconsideration, filed December 28, 2001, KVR detailed in what respects the Board's December 12, 2001, Decision involved material error, and KVR will not repeat its allegations.

6. Suffice it to say that the Board's December 12, 2001, Decision evinced a concern that permitting KVR to withdraw the abandonment request and entertaining TRI's Verified Notice of Exemption would "compromise the integrity of that [section 10904] statutory scheme by pulling the rug from under Rail Ventures' OFA based solely upon Trinidad's professed newfound enthusiasm for

² See, KVR's letter, dated August 31, 2001, supplemented by its Statement, filed September 10, 2001, in STB Docket No. AB-573X, Trinidad Railway, Inc.--Abandonment Exemption--In Las Animas County, CO.

³ See, Verified Notice of Exemption, filed herein on September 4, 2001.

rail service."

7. Rail Ventures' OFA, however, has validity only in the face of the threatened abandonment of a railroad line and the loss of freight services which the shippers would suffer. The whole idea behind section 10904 is the preservation or restoration of railroad service, as this Board itself has recognized time and again. STB Docket No. AB-581X, 1411 Corporation--Abandonment--In Lancaster County, PA, served September 6, 2001; STB Docket No. AB 547X, Roaring Fork Railroad Holding Authority--Abandonment--In Garfield, Eagle, and Pitkin Counties, CO, served May 21, 1999, aff'd, Kulmer v. Surface Transp. Bd., 236 F.3d 1255 (10th Cir. 2001); STB Docket No. AB-6 (Sub-No. 30X), The Burlington Northern and Santa Fe Railway Company--Abandonment Exemption--In King County, WA, served August 5, 1998, aff'd, Redmond-Issaquoh R.R. Preserv. v. Surface Transp., 223 F.3d 1057 (9th Cir. 2000); Abandonment of R. Lines & Discontinuance of Serv., 365 I.C.C. 249, 260 (1981).

8. Since KVR began moving coal from the Lorencito Mining Company's mine to the tipple of Picketwire Processing Company on October 29, 2001, no loss of service on the Jansen-to-New Elk Mine railroad line has occurred or been threatened. To the contrary, on December 1, 2001, KVR transported the first 115-car unit train of coal from the tipple to Jansen, where the train was turned over to The Burlington Northern and Santa Fe Railway Company for movement beyond. On December 16, 2001, KVR transported the second unit train of coal, and it is anticipated

that a unit train of coal will move over the railroad line every eight to ten days. Maxwell has 17 million tons of surface coal on reserve and anticipates that, if it were able to market a million tons of coal a year, it will be 17 years before the supply of coal will have been exhausted.

9. The Jansen-to-New Elk Mine railroad line, which had been a defunct property only 18 months ago, now is a successful operation, and, if the Board were to persist in its efforts to force KVR to divest itself of the line by enabling Rail Ventures to purchase it under the OFA process, KVR would expect to be paid the line's going concern value. 49 U.S.C. 10904(f)(1)(B) obliges the Board, if asked, to set a price which is not below the fair market value of the property, and, in the case of the Jansen-to-New Elk Mine railroad line, that is its going concern value. Indeed, the Board would be constitutionally barred from setting a lower price.

10. KVR, however, fervently hopes it will not come to that and that the Board will allow KVR, as the owner and operator of the Jansen-to-New Elk Mine railroad line to safeguard continued service on the line by allowing it to lease the line to TRI, retaining for itself the lessor's residual common carrier obligation.

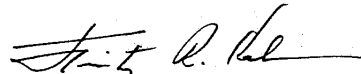
WHEREFORE, Kern Valley Railroad Company asks that Petition to Reopen of Trinidad Railway, Inc., and A. P. Maxwell Development Company, L.L.C., be granted and that the Board's Decision, served December 12, 2001, be vacated so as to allow

Kern Valley Railroad Company to withdraw the abandonment request and Trinidad Railway, Inc., to lease the Jansen-to-New Elk Mine railroad line.

Respectfully submitted,

KERN VALLEY RAILROAD COMPANY

By its attorney,

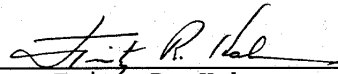

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Dated: January 11, 2002

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing pleading upon counsel for each of the parties by mailing them copies thereof, with first-class postage prepaid.

Dated at Washington, DC, this 11th day of January 2002.


Fritz R. Kahn